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5  
6 Defendant and Counterclaimant  
CAVIAR CREATOR, INC., a Nevada corporation

7  
8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10  
11 DANIEL W. FAERFERS and KATJA  
FAERFERS,

12 Plaintiffs,

13 v.

14 CAVIAR CREATOR, INC., a Nevada  
15 Corporation, individually and as successor  
16 to CAVIAR CREATOR, INC., an Oregon  
Corporation

17 Defendants.

18  
19 **AND RELATED COUNTERCLAIMS**

CASE NO. 2:04-CV- 2690 MCE/EFB

[Judge Morrison C. England]

**ORDER GRANTING CAVIAR  
CREATOR, INC.'S MOTION TO  
EXCLUDE WITNESSES AND  
CONFIRMING AND CLARIFYING  
EFFECT OF PRIOR ORDER  
TERMINATING PLAINTIFFS'  
COMPLAINT AND STRIKING  
ANSWER TO COUNTERCLAIMS**

Date: November 28, 2007  
Time: 9:00 a.m.  
Courtroom: 3

20 On November 16, 2007, at 9:00 a.m., before the Honorable Morrison C. England,  
21 Jr., United States District Court Judge, in Courtroom 3 of the United States District Court,  
22 Eastern District, located at 501 I Street, Suite 4-401, Sacramento, California, 95814, this  
23 Court GRANTED Defendant Caviar Creator, Inc.'s ("Caviar Creator") Motion for  
24 Terminating Sanctions Against Plaintiffs in its entirety and further ordered that  
25 Plaintiffs/Counter-defendants Daniel W. Faerfers and Katja Faerfers' ("the Faerfers")  
26 Answer to Caviar Creator's counterclaims be stricken. The Court's order was based on  
27 findings, including among other things, that plaintiffs willfully violated this Court's very  
28 specific orders, and also apparently violated similar German court orders with respect to  
Order Granting Motion to Exclude Witnesses and Confirming Effect of Prior Order of Terminating Sanctions

1 the transfer of United Food Technologies, AG (“UFT”) stock to a neutral third-party  
2 escrow agent pending the outcome of this case. The findings and rationale for this Court’s  
3 order terminating the Faerfers’ complaint and striking their answer to the counterclaims is  
4 set forth more fully on the record as reflected in Document No. 267 in this case  
5 [*Reporter’s Transcript*, Friday, November 16, 2007, Defendant’s Motion for Terminating  
6 Sanctions and Final Pretrial Conference].

7 During the Final Pretrial Conference, also held on November 16, 2007, Caviar  
8 Creator moved to exclude certain witnesses previously identified by the Faerfers. As a  
9 result, this Court allowed the parties an opportunity to submit written briefs and argument  
10 addressing the effect of this Court’s order involuntarily dismissing plaintiffs’ complaint  
11 and striking their answer, and the Court scheduled a further hearing to be held on  
12 November 28, 2007. Specifically, in light of the order terminating plaintiffs’ complaint  
13 and striking their answer, the Court allowed the parties an opportunity to address what, if  
14 any, rights the Faerfers now have to present witnesses to challenge Caviar Creator’s claim  
15 for damages made through its counterclaims.

16 Caviar Creator later notified this Court that it waives its right to a jury trial in light  
17 of the termination of the Faerfers’ complaint and stricken answer and Caviar Creator  
18 requested that this matter proceed before the Court, without a jury.

19 On November 28, 2007, at 9:00 a.m., Caviar Creator’s motion to exclude witnesses  
20 came on for hearing before this Court. Chris A. McCandless and Eileen M. Diepenbrock  
21 of Diepenbrock Harrison appeared on behalf of Caviar Creator, and Cris C. Vaughan of  
22 Vaughan & Associates appeared on behalf of the Faerfers.

23 **After consideration of the briefs and arguments of counsel, and all other**  
24 **matters presented to the Court, the Court makes its findings and orders as follows**  
25 **and as stated on the record at the hearing on November 28, 2007:**

26 1. The Court confirms that its prior order, issued November 16, 2007,  
27 terminating the Faerfers’ complaint pursuant to Federal Rule of Civil Procedure, Rule  
28 41(b), is a terminating sanction for violation of court orders and is an adjudication on the

1 merits of the Faerfers' claims. Consequently, the Faerfers claims are dismissed with  
2 prejudice, and the effect of this order is to terminate and bar any further proceedings by  
3 the Faerfers, in any forum, based on the allegations of their complaint, subject to the  
4 particular laws governing the jurisdiction;

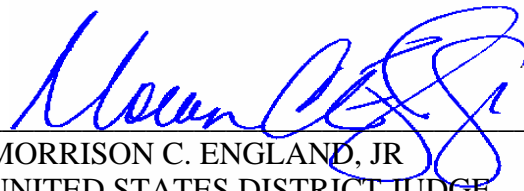
5 2. The Court confirms that, as a result of their answer having been stricken, the  
6 Faerfers no longer have standing to appear in this case and shall not be permitted to  
7 participate in further proceedings;

8 3. The Court GRANTS Caviar Creator's request to proceed without a jury, and  
9 orders that this case now proceed as a default prove-up hearing with respect to the  
10 damages to be awarded to Caviar Creator;

11 4. The Court finds and orders that the UFT shares obtained by the Faerfers from  
12 Caviar Creator, shares now held by a neutral third-party in Germany, should be returned  
13 to Caviar Creator (subject to the appropriate jurisdiction over the UFT shares being  
14 established). This Court's prior order that the UFT shares be held in a neutral escrow  
15 account is vacated.

16 **IT IS SO ORDERED.**

17 DATED: December 4, 2007

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19 MORRISON C. ENGLAND, JR.  
20 UNITED STATES DISTRICT JUDGE  
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